MSS

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1655 OF 2005

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. A.Y. Sakhare with L.M. Acharya for petitioners

Mr. K.G. Parab for R-1

CORAM: SMT. RANJANA DESAI, J.
5/9/2005

P.C.:-

The petitioners are original defendants 6 & 7. The petitioners have challenged in this writ petition order dated 17/1/05 whereby the Division Bench of the Small Causes Court dismissed the appeal filed by the defendants against the order dated 2/9/04 passed by the Small Causes Court on interim Notice No. 749/04 taken out in R.A.E. Suit No. 551/03 by defendants 6 & 7 for allowing them to file the written statement by condoning the delay. Admittedly there is delay in filing the written

statement.

2. The trial court has held that defendants 6 & 7 have not made out any sufficient cause and/or ground for allowing them to file written statement after the period of 90 days as prescribed under Order 8 Rule 1 of the Code of Civil Procedure. The lower appellate court dismissed the appeal holding that it is not maintainable. Hence this writ petition.

3. It is true that defendants 6 & 7 have not taken prompt step to file written statement and the explanation offered by them for delay is not satisfactory. It is pointed out by the learned Counsel for the defendants that the defendants are not keeping good health. In my opinion, in the circumstances of the case the interest of justice demand that the defendants should be allowed to file written statement by saddling them with heavy costs.

4. Hence in the circumstances following order is passed.

a) Order dt. 17/1/05 is set aside. The petitioners, original defendants 6 & 7 are permitted to file written statement subject to their paying costs quantified at Rs.5000/- to the plaintiffs. Costs be deposited within two weeks.

b) Payment of costs is condition precedent to the filing of the written statement. The trial court shall not take written statement on file if the costs are not paid. Needless to say that if the costs are paid the written statement be taken on file.

c) Petition is disposed of in the aforestated terms.

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